

CHILDREN AND FAMILIES

DIVISION OF YOUTH AND FAMILY SERVICES

Dispute Resolution

Proposed Readoption with Amendments: N.J.A.C. 10:120A

Authorized By: Eileen Crummy, Acting Commissioner, Department of Children and Families.

Authority: N.J.S.A. 30:1-9 et seq., 30:1-12, 30:4C-4, 26a and 49 and 52:14B-4(b).

Calendar Reference: See Summary below for an explanation of exception to calendar requirements.

Proposal Number: PRN 2008-211.

Submit written comments by September 5, 2008 to:

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 10:120A will expire on June 12, 2008. In accordance with N.J.S.A. 52:14B-5.1c, this date is extended to December 9, 2008. The Division has reviewed these rules and has determined that

they continue to be necessary, proper and reasonable for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978).

As the Division has provided a 60-day comment period on this notice of proposal, this notice is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Division proposes the readoption and amendment of the rules governing the Division's dispute resolution processes. The Division adopted this chapter in 1998 and readopted it in 2003 with extensive amendments.

This chapter sets out the dispute resolution process for the Division's applicants and clients who wish to dispute a decision regarding specific services provided by or through a local office of the Division or a finding of substantiated child abuse. The rules also address a relative or an applicant or caregiver in the DYFS Legal Guardianship Subsidy Program who wishes to dispute a decision made by the Division related to caring for a relative child or being eligible for the DYFS Legal Guardianship Subsidy Program.

The rules explain three separate types of dispute resolution opportunities, preliminary efforts, dispositional reviews, and administrative hearings held by the Office of Administrative Law. The rules also specify which dispositional resolution opportunity is available for each type of decision.

The dispute resolution process as outlined in this chapter gives broad access to applicants, clients, and service providers to dispute a decision by the Division that

they disagree with. The existence of the dispute resolution process acts as an incentive to the Division to maintain a high level of communication with applicants, clients, and service providers.

In 1998, the Superior Court of New Jersey, Appellate Division, decided two cases regarding the entitlement of perpetrators of substantiated child abuse or neglect to appeal, through an evidentiary administrative hearing, a substantiated finding. These cases are: *In the Matter of Allegations of Sexual Abuse at East Park High School*, 314 N.J. Super. 149, and *New Jersey Division of Youth and Family Services v. M.R.*, 314 N.J. Super. 390 (App. Div. 1998). In each case, the Court found that, where material disputed facts existed, a trial-type hearing before an Administrative Law Judge was needed to protect the due process and liberty interests of the perpetrator of substantiated child abuse or neglect. Because the Division's dispositional reviews do not meet this standard and because the Division has not been able to complete dispositional reviews in a timely manner, the Division has decided that it would be most appropriate to transfer dispositional reviews for appeals of substantiation of child abuse or neglect to the Office of Administrative Law.

The Division proposes to begin offering either an administrative hearing or a dispositional review to applicants, clients, and service providers, but never both for the same dispute. Dispositional reviews will be offered only for the issues listed in N.J.A.C. 10:120A-3.1(a): a service provider who disagrees with a status issue or a resource parent who disagrees with the removal of a child in foster care for specific reasons or who has been placed in the home continuously for six months or more for adoption. This change requires that the Division amend the

definition of “agency decision” at N.J.A.C. 10:120A-1.3(a) to indicate that an agency decision, resulting from a dispositional review, is no longer subject to further appeal. The newly-defined “agency decision” is no longer accurate in many places in the chapter. The Division has removed “agency decision” from the following citations: N.J.A.C. 10:120A-1.1(a)3, 1.3(a), definition of “appeal,” “appellant,” “Division action,” “final agency decision” paragraphs 4 & 5, “Motion for Summary Disposition,” recodified N.J.A.C. 10:120A-2.5(d) and (f), 2.6(b), 4.1(b), 4.2(d) and 4.3(c)1 and 3.

Paragraph 3 of “final agency decision” has been amended to remove the statement “when the appellant is not eligible for further dispute resolution opportunities.” It is unnecessary as there will be no situation in which an appellant who had a dispositional review will be entitled to further dispute resolution. N.J.A.C. 10:120A-2.7(b) has been amended to remove “that is not eligible for an administrative hearing” since a dispute can be handled by either a dispositional review or an administrative hearing, but not both. Agency decisions are no longer eligible for administrative hearings, so there is no need to qualify agency decisions here.

The Division also proposes to remove the statement indicating that an agency decision can be disputed through an administrative hearing at N.J.A.C. 10:120A-2.7(c).

The Division proposes to delete N.J.A.C. 10:120A-3.2(n) and (o) because they address further dispute resolution after the agency decision. There is no longer further dispute resolution under the auspices of these rules.

The Division also needed to remove other language in order to clarify that appellants no longer have a choice of the type of dispute resolution they receive. These amendments are in N.J.A.C. 10:120A-1.1(a)4, 2.2(b)3, 2.5(a) and recodified 2.5(e).

The Division has renamed its offices providing direct services to clients from District Offices to local offices. The Division has also disbanded the Adoption Resource Centers (ARCs). The functions of the ARC's are now housed in the local offices, with the exception of Newark. Newark has an office dedicated exclusively to adoption work arising from all of the Newark local offices. The Division has used the standard term "local office" at N.J.A.C. 10:120A-2.2(g)4 and 5. The Division has replaced "District Office and Adoption Resource Center" with "Division representative" at N.J.A.C. 10:120A-1.3, "Division service issue," and with "local office" at N.J.A.C. 10:120A-1.2(a)1.

The Division has amended N.J.A.C. 10:120A-1.2(a) to separate the topics of preliminary efforts and informal procedures. N.J.A.C. 10:120A-1.2(a) now includes information about who may receive preliminary efforts. The new material in new subsection (b) states that the rules describe informal procedures to resolve disputes. Subsection (a) was separated to clarify that all types of disputes covered by this chapter are entitled to preliminary efforts, but all types of disputes are not entitled to informal procedures, known as dispositional reviews. Subsections (b) through (g) have been recodified as (c) through (h).

At N.J.A.C. 10:120A-1.2(a)3, the Division has removed legal and regulatory citations related to status issues. The Department now licenses all types of resource parents and offers them dispute resolution through N.J.A.C. 10:122C-2.5, not through this chapter. A reference to N.J.A.C. 10:122C-2.5 has been added to recodified N.J.A.C. 10:120A-1.2(d) to let the public know where the dispute resolution rules for resource parents are located. The definition of “status issue” at N.J.A.C. 10:120A-1.3(a) has been amended to remove situations no longer covered by this chapter.

The Division has updated N.J.A.C. 10:120A-1.2(d) and 1.3(b), definition of Division, to reflect that the Division is part of the new Department of Children and Families. The Division has also included a definition in N.J.A.C. 10:120A-1.3(a) of the term “Department,” defining it as the Department of Children and Families. The Division has also removed all references to the Department of Human Services’ rules at N.J.A.C. 10:6, as the Division is no longer part of the Department of Human Services. These references are located in the authority, recodified N.J.A.C. 10:120A-1.2(g), 1.3(a), definition of “administrative hearing” and “dispositional review,” 3.2(e), and 4.3(b).

The name of the Bureau of Licensing is amended to the title currently in use within the Department, the Office of Licensing, in recodified N.J.A.C. 10:120A-1.2(d). In N.J.A.C. 10:120A-2.6(b)5, the regulatory jurisdiction of the Division has been changed to the Department to reflect the new organizational structure.

The reference in N.J.A.C. 10:120A-1.3(a) to the definitions in N.J.A.C. 10:122B has been revised to reflect a recodification at 10:122B.

N.J.A.C. 10:120A-1.3(a), definition of “Administrative Hearings Unit,” has been amended to reflect that the Administrative Hearings Unit is part of the Department, but no longer part of the Division. It has also been amended to remove hearings on substantiated findings of child abuse and neglect because they are no longer handled by the Administrative Hearings Unit.

N.J.A.C. 10:120A-1.3(a), definition of “adoptive parent” has been removed because the Division uses a new term, “resource parent” which includes adoptive parents. A definition of “resource parent” has been added to the rules. N.J.A.C. 10:120A-2.1(d), and recodified N.J.A.C. 10:120A-3.1(a)2 through 5 have been amended to use the term “resource parent” or “resource home.” The definition of “service provider” has been amended to replace outdated terms of foster parent and adoptive parent with “resource parent.” The recodified paragraph 2 of “service provider” has been amended to remove the DYFS Relative Care Permanency Support Program because the program no longer exists. Relatives are still service providers as defined in recodified paragraph 1.

The Division has added an Institutional Abuse Investigation Unit employee to those who can make a Division action, in the definition of “Division action” at N.J.A.C. 10:120A-1.3(a). This amendment is necessary because the Institutional Abuse Investigation Unit is part of the Department of Children and Families, but no longer a part of the Division of Youth and Family Services.

The Division has removed citations to expired rules at N.J.A.C. 10:120A-1.3(a), definition of “Division service issue.” The Division has also removed the DYFS Legal Guardianship Subsidy Program and the DYFS Relative Care Permanency Support Program from the definition. This means that parents and children no

longer have the ability to dispute a child's participation in these programs. Dispute resolution for applicants to become a caregiver is covered in N.J.A.C. 10:122C-2.5 and 10:120A-1.3(a), definition of "status issue."

The Division is removing adoption subsidy from the list of services covered by this chapter, as listed in the definition of Division service issue. Dispute resolution for adoption subsidy is covered by the rules in N.J.A.C. 10:121-1.7. The procedures for dispute resolution differ between the two chapters. Therefore, dispute resolution for adoption subsidy must be removed from one of the two chapters. The definition of "reduction" at N.J.A.C. 10:120A-1.3(a) has been amended to remove any reference to adoption subsidy payments as that is covered in the other chapter of rules.

The Division has amended the definition of "Division service issue" to include six new services. These six services were recently specified to N.J.A.C. 10:133E-2.3(b): discharge planning and aftercare services, domestic violence services, educational support, health care services, mentor services, and substance abuse services. Adding them to the definition of "Division service issue" allows the Division's clients to have the right to appeal a decision by a Division representative to deny, reduce, suspend, or terminate these services. The Division has added the subchapter to the citation to clarify that the referenced information is in N.J.A.C. 10:133E-2.

Pursuant to N.J.S.A. 9:3A-6, the final agency decision maker is the Commissioner or designee, not the Director. N.J.A.C. 10:120A-1.3(a), definition of "final agency decision," paragraphs 1 and 5, and "Motion for Summary Disposition," N.J.A.C.

10:120A-2.7(b) and recodified 2.7(c) and (c)1, and 4.2(c) and (c)1, (d), and (e) have been amended to reflect the statute.

The definition of “final agency decision” at N.J.A.C. 10:120A-1.3 has been amended at paragraph 3 to replace the “Deputy Director or Assistant Director, at the designation of the Director” with the Review Officer. It is the Review Officer who makes a decision after a dispositional review.

The definition of “finding” has been amended to more nearly match the recently adopted definition in N.J.A.C. 10:129-1.3(a). The Division changed the description of the determination from “official” to “final” and “child protective service investigation” to “child protection investigation.” The Division has removed the reference to the repealed N.J.A.C. 10:129A and the Office of the Public Defender. The Division has specified that the finding is made by the child protective investigator and his or her supervisor, rather than the Division, to more closely explain current Division practice.

The definition of “Institutional Abuse Investigation Unit” at N.J.A.C. 10:120A-1.3(a) has been amended to show that the unit is organizationally part of the Department, but no longer part of the Division.

The definition of “Review Officer” in N.J.A.C. 10:120A-1.3(a) has been amended to remove employees of the Office of the Public Defender as they no longer serve that function for the Division. The definition has also been amended to state that Review Officers are Department representatives, rather than Division representatives.

The definition of “substantiated” has been amended to more closely match the recently adopted definition at N.J.A.C. 10:129-1.3. The Division has added that the child protective investigator and supervisor determine that a child is an abused or neglected child in order to clarify that both employees make the decision to substantiate. The Division has added that the standard used to substantiate is “by a preponderance of the evidence.” The Division added a reference to the statutory definition of parent or guardian to clarify the meaning of the term in this context and has deleted reference to caregivers, temporary caregivers or institutional caregivers. The citation in the definition has been updated as N.J.A.C. 10:129A was repealed and the material referenced was placed in N.J.A.C. 10:129.

The Division has amended N.J.A.C. 10:120A-1.3(b) to include the Institutional Abuse Investigation Unit by name to the definitions of “Division” and “Division representative” to clarify for these rules only who is covered by this chapter of rules.

The Division has amended N.J.A.C. 10:120A-1.4 to place the decision to relax the application of these rules in the hands of the Commissioner or designee, rather than the Director or his or her representative. The Division is proposing the change to Commissioner because the Commissioner is responsible for all aspects of the Department’s operations. The Division is substituting the term designee for representative here to achieve consistent terminology within the chapter.

For the same reasons, the Division is amending N.J.A.C. 10:120A-4.3(b) to give the authority to send an uncontested case to the Office of Administrative Law to the Commissioner or designee.

The Division has decided to accept only written requests for dispute resolution at N.J.A.C. 10:120A-2.5(e) and 4.1(b). These written requests will go directly to and be handled by the Administrative Hearings Unit and not to any other Department staff at recodified N.J.A.C. 10:120A-2.5(e) and (f). Requiring a written request makes the request clearer to the Administrative Hearings Unit, so the staff can be sure exactly what the appellant is appealing. N.J.A.C. 10:120A-2.1(b)3 and 2.5(c) are amended to remove the need for the Administrative Hearings Unit to provide the service provider with a telephone number at the time of notice. N.J.A.C. 10:120A-2.5(a) has also been amended to remove oral requests for dispute resolution.

N.J.A.C. 10:120A-2.1(a) and (b) have been amended to update references, which have been recodified.

N.J.A.C. 10:120A-2.2(a) has been amended to reflect the correct citation related to dispute resolution for Division services issues. Division service issues will be appealed through administrative hearings only.

N.J.A.C. 10:120A-2.2(b)4 has been amended to remove mention of dispositional reviews. Dispositional reviews will no longer be done for Division service issues. The Division has also amended N.J.A.C. 10:120A-2.6(b)3, 4 and 5 to include administrative hearings since appeals about Division service issues will be

handled by administrative hearings only. The Division has amended N.J.A.C. 10:120A-4.3(a)1 to include that requests by a child under the Division's supervision, a person with physical custody of the child, a sibling, or a relative to dispute any Division service issue will be transmitted to the Office of Administrative Law.

N.J.A.C. 10:120A-2.3 has been amended to use the current citation to N.J.A.C. 10:129-5.4(c) and to clarify that, for the purposes of this rule, the Division provides notice of a finding of substantiated child abuse or neglect only to perpetrators.

N.J.A.C. 10:120A-2.4(a) has been amended to use the current term within the organizational structure of the Division, area office, instead of regional office.

The citations to N.J.A.C. 10:120A-2.5 and 10:122C have been brought up-to-date in N.J.A.C. 10:120A-2.6(b)1.

The Division has combined the information about requesting dispositional reviews and administrative hearings into one subsection, N.J.A.C. 10:120A-2.5(a), and deleted N.J.A.C. 10:120A-2.5(d). There was no reason to have separate subsections, as the process for requesting either one is the same. References to N.J.A.C. 10:120A-2.5(d) have been removed throughout the rules.

The Division has amended N.J.A.C. 10:120A-2.6(b)3 by adding "or herself." This uses the inclusive language of "himself or herself" and is in keeping with the use of "him or her" throughout the rules.

The Division has clarified that the decision referred to at recodified N.J.A.C. 10:120A-2.7(e) is the final agency decision.

The Division has relocated all the potential disputes that can be handled by the administrative hearings process from N.J.A.C. 10:120A-3.1(a)1 and 2, to N.J.A.C. 10:120A-4.3(a)1 because dispositional reviews will no longer be offered in these circumstances. An applicant's or client's request for dispute resolution for these issues will be handled as an administrative hearing only.

The Division has revised the terminology in recodified N.J.A.C. 10:120A-3.1(a)2 to say "a child receiving foster care" rather than a "foster child" and in recodified N.J.A.C. 10:120A-3.1(a)5 to say "child needing foster care" rather than a "foster child." The Division prefers to use this terminology, which identifies a service need rather than labeling the child.

References to N.J.A.C. 10:120A-3.1(a) have been corrected throughout.

Therefore, the Division proposes an amendment at N.J.A.C. 10:120A-3.1(a)8 to no longer offer dispositional reviews on contested cases of substantiated findings of child abuse and neglect. All dispute resolution for these appeals will be sent to the OAL for administrative hearings in accordance with N.J.A.C. 10:120A-4.3(a)2.

At recodified N.J.A.C. 10:120A-3.1(a)2, the Division has added another reason why a resource parent cannot appeal the removal of a child from his or her home: someone in the household is a substantiated perpetrator of child abuse or neglect.

The Division has added a new N.J.A.C. 10:120A-3.1(b) to state that a relative does not have a right to appeal a Division action that it is not in a child's best interest to

be placed with that relative. The statute, N.J.S.A. 30:4C-12.1b, guarantees only a relative's right to review of a determination of the relative's unwillingness or inability.

The Division has revised the procedures for dispositional reviews at N.J.A.C. 10:120A-3.2(c) and (d). At subsection (c), the Review Officer can now choose whether to hold a telephone conference in lieu of a face-to-face meeting. This amendment allows the Review Officer to handle dispositional reviews in an efficient manner. The amendments to subsection (d) allow the Review Officer to select a record and document review in lieu of a face-to-face or telephone meeting in order to process requests for a dispositional conference as efficiently as possible.

At N.J.A.C. 10:120A-2.5(c) and recodified 3.2(k), the Division has removed the requirement to include a name to contact if the appellant wants to appeal further to the Appellate Division of Superior Court after a dispositional review is completed. Instead, contact information must be included with the agency decision. This change makes it easier to process the requests for further dispute resolution, as they can go directly to the person handling these requests. The Division has also amended recodified subsection 3.2(k) to reference N.J.A.C. 10:120A-2.8, which specifies what further appeal rights consist of. The purpose of this amendment is to clarify this information for the reader.

The Division has amended N.J.A.C. 10:120A-4.1(b) to use the term "Division representative" instead of "Division" for clarification.

N.J.A.C. 10:120A-4.1(c) is being deleted because the Division no longer handles requests for administrative hearings. Requests go directly to the Department's Administrative Hearings Unit.

The Division is amending recodified N.J.A.C. 10:120A-4.1(c) to allow, but not to require, the Administrative Hearings Unit to request information from the appellant regarding the appellant's legal position. An appellant may identify his or her position in his or her initial request for an appeal.

The Division no longer has an Assistant Director of Intergovernmental Affairs. That function is now done by the Director of Legal Affairs in the Department. Changes to use the new terminology have been made throughout N.J.A.C. 10:120A-4.2(a) and (b).

The Division has amended N.J.A.C. 10:120A-4.3(c)2 to expand the list of issues that will not be sent to the Office of Administrative Law for an administrative hearing. This additional issue for which no administrative hearing is authorized is when the client wants a specific service provider and the Division has offered an appropriate alternative service provider. Selecting the service provider for a child is the Division's decision, to be made based on the best interests of the child, availability of service providers, and available financing.

The Division has removed the current N.J.A.C. 10:120A-4.3(c)4 and 5 and replaced them with a more general statement that no requests for dispute resolution listed in N.J.A.C. 10:120A-3.1 can be sent to the Office of

Administrative Law. This clarifies that all issues eligible for dispositional reviews are ineligible for administrative hearings.

Social Impact

The social impact of the rules proposed for readoption has been positive. Having an available and free method of disputing Division decisions puts applicants, clients, and service providers on a more equal footing with the Division. Their input into decisions affecting themselves is addressed throughout the Division's rules. These rules guarantee the Division's commitment to clients' and service providers' rights.

The social impact of the amendments related to perpetrators of substantiated child abuse and neglect is that those perpetrators are provided with a formal procedure to resolve disputes with the Division. In 2004, the Division substantiated 7,964 incidents of child abuse and neglect, by 7,855 perpetrators.

The Division expects that the proposed amendments will be favorably received. They are consistent with the due process opportunities offered throughout the legal system to persons with a dispute. They will lead to timelier dispute resolution. As the Appellate Division stated in *In the Matter of Allegations of Sexual Abuse at East Park High School, supra*, 314 N.J. Super. at 165, there is "no government interest which will be impaired by a trial-type process which subjects the allegations made to rigorous testing."

Affording the perpetrator of substantiated child abuse and neglect an administrative hearing before an Administrative Law Judge in cases where

material factual disputes exist will have a positive impact on the perpetrator when the finding of substantiation is overturned. Two hundred and twenty-one cases were referred to the Office of Administrative Law for an administrative hearing in 2006. Not being listed in the Division's Central Registry of perpetrators of substantiated child abuse and neglect has a positive impact in several ways. In addition to clearing the perpetrator's reputation, removing a person's name from the Central Registry permits a person to work in a child care center, to become a registered family day care provider, and to become a resource parent. See N.J.S.A. 9:3-54.2b, N.J.A.C. 10:121A-5.6, 10:122-4.9, 10:122C-1.7 and 2.13(b) and 10:126-5.3.

The Division also anticipates that the other amendments will positively impact those who are affected by them. The telephone conferences may affect everyone who is entitled to a dispositional review, as the telephone conference may serve as their dispositional review instead of a face-to-face meeting. The revised notification process affects everyone who is notified of a Division action or agency decision. In 2006, these changes would have affected each of the persons who made the 1844 requests for dispositional reviews received by the Division and each of the persons for whom the 934 dispositional reviews were held.

Adding the ability of a relative, whom the Division has determined to be unwilling or unable to assume care of a child, to have a dispositional review is an advantage to the relative. While the statute, N.J.S.A. 30:4C-12.1, states the relative's right to "review by the division," these rules provide detailed information about the process. This information can be helpful to the relative in preparing his or her appeal.

Information about the Motion for Summary Disposition also benefits appellants of a substantiated finding of child abuse or neglect and other appellants when no material facts are in dispute. The appellant benefits from the information available about the process. Additionally, the process benefits the appellant by providing a mechanism to allow a further venue of appeal for those appellants ineligible for an administrative hearing at the OAL. The Division referred 35 cases to the Attorney General's office for Motions for Summary Disposition in 2006.

Economic Impact

The dispute resolution procedures outlined in this chapter have no negative financial impact upon perpetrators of substantiated child abuse or neglect, relatives of children under the Division's care, or clients or applicants of the Division. The Division and the Office of Administrative Law provide dispute resolution opportunities at no cost to the participants, although the participants are allowed to retain an attorney at their own expense.

The Department's expenses for holding dispositional reviews and processing requests for administrative hearings consist of the time of nine review officers and their clerical support, and the Administrative Hearings Unit, which includes seven professional employees and clerical support.

The expense of holding administrative hearings and dispositional reviews is part of State appropriations. By allowing more Division actions and agency decisions

to be disputed, the amendments to the rules will generate more work for the Division and OAL.

The rules are in compliance with New Jersey's State Plan, required by the Federal Child Abuse Prevention and Treatment Act. The state plan must include provisions, procedures, and mechanisms by which individuals who disagree with an official finding of child abuse or neglect can appeal the finding, 42 U.S.C. §5106a(b)(2)(A)(xv)(II). New Jersey's basic State grant appropriation for FY 2008 is \$751,000.

In addition, the New Jersey Task Force on Child Abuse and Neglect's appropriation from the Children's Justice Act, pursuant to 42 U.S.C. §5106c(b)(1), is \$483,000 for FY 2008. The Community-Based Family Resource Program is appropriated \$866,000 for FY 2008.

The rules are also in compliance with New Jersey's State Plan for Title IV-E of the Social Security Act. The state plan must include an opportunity for a fair hearing for any individual whose claim for benefits is denied or not acted on with reasonable promptness, pursuant to 42 USC §671(a)12. Since these rules establish opportunities for dispute resolution, they assist New Jersey to be eligible for Title IV-E funds. The Division's FY 2008 appropriation is \$99.2 million.

Federal Standards Statement

42 U.S.C. §5106a(b)(1) requires a state plan which specifies the areas of the child protective services system that the state intends to address with grant money

received under the Child Abuse Prevention and Treatment Act. The state plan must assure that the state has provisions, procedures, and mechanisms by which individuals who disagree with an official finding of child abuse or neglect can appeal such a finding, in accordance with 42 U.S.C. §5106a(b)(2)(A)(xv)(II). The New Jersey Child and Family Services Plan contains this assurance. These rules allowing perpetrators of substantiated child abuse and neglect to have an administrative hearing by an Administrative Law Judge are in compliance with and do not exceed this section of the Federal law.

42 U.S.C. §671(a) requires states to have a state plan providing certain assurances in order for the state to receive money authorized by Title IV-E of the Social Security Act. 42 U.S.C. §671(a)(12) requires the state to grant an opportunity for a fair hearing to any individual whose claim for benefits is denied or not acted on with reasonable promptness. These rules assist New Jersey to meet the requirements of the statute by providing methods of dispute resolution to those who apply for a service funded by Title IV-E, among those who are covered by the chapter.

Jobs Impact

The Division does not expect that the rules proposed for readoption with amendments will result in the generation or loss of any job.

Agriculture Industry Impact

The rules proposed for readoption with amendments have no impact on the agriculture industry.

Regulatory Flexibility Statement

Neither the Division nor the Division's applicants, clients and service providers are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The rules proposed for readoption with amendments do not impose reporting, recordkeeping or compliance requirements on small businesses. These rules provide clients and service providers an opportunity to dispute the Division's decisions in specified circumstances. Therefore, a regulatory flexibility analysis is not necessary.

Smart Growth Statement

The Division does not anticipate that the rules proposed for readoption with amendments will have any impact on the achievement of Smart Growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:120A.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 120A DISPUTE RESOLUTION

SUBCHAPTER 1. INTRODUCTION AND OVERVIEW

10:120A-1.1 Purpose

(a) The purposes of this chapter are to:

1.-2. (No change.)

3. Identify who may appeal certain Division actions [and agency decisions] to the Office of Administrative Law (OAL); and

4. Describe the procedures to request an administrative hearing before the OAL, except as limited by N.J.A.C. 10:120A-2.5, 4.1, 4.2 and 4.3[, when other mechanisms for resolving a dispute, if desired by the appellant, have been exhausted or are not applicable].

10:120A-1.2 Scope

(a) These rules describe the preliminary [and informal procedures] efforts provided by the Division to resolve disputes regarding:

1. Services provided by or through the [Division's District Offices and Adoption Resource Centers] local offices;

2. (No change.)

3. Status issues for service providers of the Division pursuant to N.J.S.A. 30:4C-12.1, and in accordance with N.J.A.C. 10:[121A-5.6, 10:122B, 10:122C, 10:122E, and] 132A.

(b) These rules describe the informal procedures available to resolve disputes through the Division's dispositional reviews.

[(b)] (c) These rules also describe the procedures for requesting formal resolution through the OAL for contested and uncontested matters, in accordance with N.J.A.C. 1:1.

[(c)] (d) An issue related to the denial, suspension, conditional approval, revocation or closure of an agency or program licensed, certified or approved by the [Bureau] Office of Licensing, [Division of Youth and Family Services] Department of Children and Families, may be appealed in accordance with N.J.A.C. 10:121A-2.3 and 2.4, 10:122-2.5, 10:122C-2.4(d) and 2.5, 10:124-1.6, 10:126-5.8, 10:127-2.4 or 10:128-2.4 and, consequently, are not covered by these rules.

[(d)] (e) These rules do not govern employee personnel matters.

[(e)] (f) These rules do not govern issues that are before, or have been resolved by, a trial court with jurisdiction over the matter under dispute.

[(f)] These rules do not govern appellants entitled to dispute resolution in accordance with N.J.A.C. 10:6, regarding Department of Human Services actions or inactions.]

(g) These rules do not govern questions of fact relating to contractual activities.

[(g)] (h) These rules do not govern across the board service reductions or terminations that are the result of reductions in Federal or State funding.

10:120A-1.3 Definitions

(a) The definitions in N.J.A.C. [10:122B-1.4] 10:122B-1.3 and 10:133-1.3 are hereby incorporated by reference. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Administrative hearing” means a hearing held by the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-9 et seq. and 52:14F-1 et seq., and N.J.A.C. 1:1 [and 10:6].

“Administrative Hearings Unit” or “AHU” is the hearings unit of the [Division] Department responsible for monitoring and transmitting contested and uncontested cases, in accordance with N.J.A.C. 1:1-8.2 and 21.1, to the OAL [, and for hearing appeals of substantiated findings of child abuse and neglect as determined by the Division’s Institutional Abuse Investigation Unit].

[“Adoptive parent” means a person with whom the Division has placed a child for adoption or who has adopted a child through the Division.]

“Agency decision” means any decision of the Division [subject to further appeal] made as the result of a dispositional review and which is not a final agency decision.

“Appeal” means a request for modification or reversal of a Division action [or an agency decision].

“Appellant” means the party who is requesting a reversal or modification of a Division action [or an agency decision].

“Business days” means the five working days of a week, other than Saturday, Sunday and legal holidays.

“Department” means the Department of Children and Families.

“Dispositional review” means an independent examination of a Division action that is conducted by a Review Officer through a record and document review or by examining relevant records and documents [in accordance with N.J.A.C. 10:6-1.4] and either convening a meeting of the relevant parties in the Division action under dispute or conducting a telephone conference.

“Division action” means a decision, plan or conduct by a Division representative, an Institutional Abuse Investigation Unit employee or an employee of the Office of the Public Defender acting as the Division’s agent in conflict matters within the scope of the individual’s official duties, which results in a “Division service issue,” a “status issue,” or which may result in a contested case as specified in N.J.A.C. 10:120A-4.3(a), but does not include [an “agency decision” or] a personnel action.

“Division service issue” means a Division action affecting a case goal or a case plan necessary to achieve a case goal as allowed in N.J.A.C. 10:121-2.4[, 10:133C-4,] and 10:133D-2, and limited to: the denial of a request for, or the reduction, suspension or termination by a Division [District Office or Adoption Resource Center] representative of the following services, as defined in N.J.A.C. 10:133-1.3 and listed in N.J.A.C. 10:133E-2: [adoption subsidy,] child care, discharge planning and aftercare services, domestic violence services, [DYFS Legal Guardianship Subsidy Program, DYFS Relative Care Permanency Support Program,] educational support, emergency maintenance service, family

preservation services, health care services, homemaker service, mentor services, out-of-home placement, post-adoption services, pre- and post-natal services, psychological/therapeutic services, respite care, self-sufficiency skills, substance abuse services, Title XIX Medicaid, transportation; or parent and child visitation as described in N.J.S.A. 9:6B-4 and N.J.A.C. 10:122D-1; or the failure of a [DYFS District Office or Adoption Resource Center] Division representative to act with reasonable promptness on a request for any of the above services.

“Final agency decision” means:

1. A final decision by the [Director] Commissioner or designee pursuant to N.J.S.A. 9:3A-6 that adopts, rejects or modifies an initial decision by an administrative law judge;
2. (No change.)
3. A final decision by the [Deputy Director or Assistant Director, at the designation of the Director] Review Officer, after a dispositional review conducted in accordance with these rules [when the appellant is not eligible for further dispute resolution opportunities];
4. [An agency decision] A Division action that becomes a final agency decision when the appellant does not choose to exercise his or her right to further dispute resolution; or
5. A final decision by the [Director] Commissioner or designee granting summary disposition and affirming a Division action [or agency decision].

“Finding” means the [official] final determination made by [the Division of the results of] a child protective [service investigation] investigator and his or her supervisor [, in accordance with N.J.A.C. 10:129A, or by the Office of the Public

Defender acting as the Division's agent in conflict matters] of the results of a child protection investigation.

...

"Institutional Abuse Investigation Unit (IAIU)" means the [Division] Department unit charged with the responsibility of investigating allegations of abuse or neglect in out-of-home settings, excluding DYFS operated facilities.

"Motion for Summary Disposition" means a motion that is prepared when no material facts are in dispute. If granted by the [Director] Commissioner or designee, a [motion] Motion for [summary disposition] Summary Disposition denies the request for an OAL hearing and requires the [Division Director] Commissioner or designee to determine whether the Division action [or agency decision] resulting from the undisputed facts is proper based on applicable law, regulations and policies, and accordingly to issue a final agency decision, affirming, reversing or modifying the Division action [or agency decision]. If a motion for summary disposition is denied by the [Director] Commissioner or designee, the matter is transmitted to the OAL.

...

"Reduction" means the Division action about a service determined by the Division to be necessary for the achievement of the case goal, which Division action causes the client to receive fewer hours or units of a service [or a decrease in the level of adoption subsidy payments than the client had been receiving immediately prior to the Division action being taken]. Reduction does not include a change in provider or location of the service or a change in the schedule of the service that does not also cause fewer hours or units of the service.

...

“Resource parent” means a person licensed pursuant to N.J.S.A. 30:4C-27.3 et seq.

“Review Officer” means a [Division] Department representative [or an employee of the Office of the Public Defender acting as the Division’s agent in conflict matters] who was not involved in the Division actions being appealed and who is charged with the responsibility of conducting a dispositional review as authorized by these rules.

“Service provider” means:

1. [A Division foster parent or applicant;
2. A Division adoptive parent or applicant;
- 3.] Each of a child’s relatives who is assessed for his or her willingness and ability to assume care of the child pursuant to N.J.S.A. 30:4C-12.1; [and]
- [4.] 2. A relative or family friend caregiver or applicant in [the DYFS Relative Care Permanency Support Program or] the DYFS Legal Guardianship Subsidy Program; or
3. A resource parent.
- ...

“Status issue” means:

1. [The denial, suspension, restriction, or closure of a Division foster parent’s home in accordance with N.J.A.C. 10:122C or 10:122E;
2. The denial, suspension, restriction, or closure of a Division adoptive parent’s home in accordance with N.J.A.C. 10:121A-5.6(g);
- 3.] The determination that a child’s relative is unwilling or unable to assume the care of the child pursuant to N.J.S.A. 30:4C-12.1(b); or

[4.] 2. The denial or termination of a relative or family friend caregiver to participate or continue to participate in the DYFS Legal Guardianship Subsidy Program in accordance with N.J.A.C. 10:132A [; or

5. The denial, suspension, restriction, or closure of a relative or family friend caregiver's home in the DYFS Relative Care Permanency Support Program].

...

“Substantiated” means a finding when the available information, as evaluated by the [Division representative] child protective investigator and supervisor, indicates by a preponderance of the evidence that a child is an abused or neglected child as defined in N.J.A.C. 10:133-1.3 because the child victim has been harmed or placed at risk of harm by a parent[, caregiver, temporary caregiver or institutional caregiver in accordance with N.J.A.C. 10:129A-3.3] or guardian, as defined in N.J.S.A. 9:6-8.21. A child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for this reason alone, be considered to be an abused or neglected child, nor shall this condition preclude the Division from providing service or seeking court relief as in N.J.A.C. [10:129A-3.4] 10:129-4.

(b) The following terms shall have the following meanings within N.J.A.C. 10:120A-1, 2 and 3, unless the context clearly indicates otherwise:

“Division” means the Division of Youth and Family Services, the Institutional Abuse Investigation Unit in the Department of [Human Services] Children and Families, or the Office of the Public Defender acting as the Division's agent in conflict matters.

“Division representative” means a professional employee of the Division of Youth and Family Services, the Institutional Abuse Investigation Unit, or of the Office of the Public Defender acting as the Division’s agent in conflict matters.

10:120A-1.4 Construction

These rules shall be liberally construed to allow the Division to discharge its statutory functions. The [Director or his or her representative] Commissioner or designee may, upon notice to all parties, relax the application of these rules where the interest of justice and considerations of due process will be furthered thereby.

SUBCHAPTER 2. GENERAL PROVISIONS FOR DIVISION DISPUTE RESOLUTION AND ADMINISTRATIVE HEARINGS

10:120A-2.1 Notice of Division action to a service provider

(a) The Division shall provide proper notice to a service provider of a Division action that creates a status issue subject to a dispositional review under N.J.A.C. 10:120A-3.1(a)[3] 1.

(b) Except as limited by (c) below, the Division shall provide proper written notice 10 days in advance of a Division action which is subject to a dispositional review under N.J.A.C. 10:120A-3.1(a)[3] 1. The written notice shall include:

1.-2. (No change.)

3. The name[, and address [and telephone number] of a Division representative to contact to request a dispositional review.

(c) (No change.)

(d) The Division shall inform the [foster] resource parent immediately if the child is removed.

10:120A-2.2 Notice of Division action to a parent

(a) Except as limited by (d), (e), (f), and (g) below, the Division shall provide notice to a parent of a Division action that creates a Division service issue under N.J.A.C. [10:120A-3.1(a)1] 10:120A-4.3(a)1 at least 10 days in advance of the Division action to a parent requesting or receiving the service or a parent requesting the service on behalf of a child or a parent of a child receiving the service.

(b) Notice of the Division action as in (a) above shall include:

1.-2. (No change.)

3. The parent's right to [a dispositional review or] an administrative hearing [or if the parent can choose either one]; and

4. The procedures for [dispositional reviews and] administrative hearings.

(c)-(f) (No change.)

(g) The Division may dispense with notice to the parent when:

1.-3. (No change.)

4. The client has been accepted for services in a new jurisdiction and that fact has been established by the local [Division] office previously providing services;

5. The client has relocated outside the jurisdiction of the [Division] local office or local agency providing services, and has not provided 30 days advance notice of such relocation to enable the Division to continue uninterrupted service if the client continues to be eligible for the service despite the relocation; or

6. (No change.)

10:120A-2.3 Notice of substantiated finding

The Division shall provide notice of a finding of substantiated child abuse or neglect to each perpetrator pursuant to N.J.A.C. [10:129A-3.4] 10:129-5.4(c).

10:120A-2.4 Preliminary efforts

(a) Field contacts, office interviews with supervisory or management personnel, and consultation with [regional] area and central office representatives comprise preliminary efforts to resolve matters under dispute. The Division representative shall advise the appellant that he or she has the opportunity to resolve a dispute using preliminary efforts prior to exercising a right to a dispositional review or an administrative hearing, if eligible.

(b)-(e) (No change.)

10:120A-2.5 Requests for dispositional reviews and administrative hearings

(a) Any person noticed of a Division action and entitled to appeal that Division action as set forth in N.J.A.C. 10:120A-3.1 may request a dispositional review or in N.J.A.C. 10:120A-4.3 may request [a dispositional review or] an administrative hearing, as appropriate, within 20 days of notice of that Division action, or within 20 days of learning of the Division action, as provided in (b) below. Any [clear] written expression[, oral or written] by an appellant, or a person acting as the appellant's representative, to the effect that the appellant wants the opportunity to present his or her case to a higher authority with regard to a Division action, constitutes a request for a dispositional review or an administrative hearing, as appropriate, when done in accordance with the notice provided.

(b) (No change.)

(c) Notice of a Division action shall provide [the name] contact information, including the address[, and telephone number of the person to whom] to which a request for an appeal is made.

(d) [Any person noticed of an agency decision in accordance with N.J.A.C. 10:120A-3.2(l) and entitled to appeal that agency decision as set forth in N.J.A.C. 10:120A-4.3 may request an administrative hearing within 20 days of learning of the agency decision. Any clear expression, oral or written, by an appellant, or a person acting as the appellant's representative, to the effect that the appellant wants the opportunity to present his or her case to a higher authority with regard to an agency decision, constitutes a request for an administrative hearing.

(e)] The recipient of the request to appeal a Division action [or agency decision] shall forward that request to the appropriate resolution authority as specified in N.J.A.C. 10:120A-3.1 or 4.3 within one business day of receipt of the request to appeal a Division action [or agency decision].

[(f)] (e) The [Division] Administrative Hearings Unit shall acknowledge in writing each request for appeal involving a matter described in N.J.A.C. 10:120A-3.1 or 4.3 within 10 business days [and in writing]. The written acknowledgment shall inform the appellant of the right to a dispositional review[,] or an administrative hearing [or both, whichever applies,] and the procedures for a dispositional review or an administrative hearing.

[(g)] (f) The Division shall deem the appellant to have waived his or her right to a dispositional review or administrative hearing, if an appellant fails to request a dispositional review or an administrative hearing within the time limits established for appealing a Division action [or agency decision] in accordance with (a)[,] and (b), [and (d)] above, except that the [Division] Administrative

Hearings Unit shall not deny the appellant's request if the reason for the delay in making the request was not within the appellant's control.

10:120A-2.6 Eligibility for continued service and status

(a) (No change.)

(b) Upon receipt of a request for a dispositional review or an administrative hearing for appealing a Division action [or agency decision] in accordance with N.J.A.C. 10:120A-2.5(a)[,] and (b) [and (d)], the status quo shall not be continued or reinstated when continuing or reinstating the service would pose a risk of harm or injury to a child, adult client or other adult related to the issue in dispute, including, but not limited to, the following circumstances:

1. The Division shall not return a child to the out-of-home placement from which a child has been removed because the child or any other child in the out-of-home placement has been abused or neglected or has been alleged to have been abused or neglected pursuant to N.J.S.A. 9:6-8.8 et seq. or when the out-of-home placement fails to meet the standards for continued approval, except as permitted in N.J.A.C. 10:122C-2.5(b) and 2.6(f) [10:122C-2.16, 2.17, or 2.18(b)];

2. (No change.)

3. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the appellant's behavior poses a threat to himself or herself or others;

4. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the matter is pending the results of an IAIU investigation; or

5. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the

Division has determined that a child in an out-of-home placement or other care in a home or facility subject to the regulatory jurisdiction of the [Division] Department is in imminent risk of harm as a result of conditions in the home or facility.

10:120A-2.7 Final agency decision

(a) (No change.)

(b) For each agency decision [that is not eligible for an administrative hearing], the [Deputy Director or Assistant Director at the designation of the Director] Commissioner or designee, shall:

1.-2. (No change.)

(c) [For an appellant who is eligible for an administrative hearing but does not request one within 20 days of notification, in accordance with N.J.A.C.

10:120A-3.2(m), the agency decision becomes the final agency decision at the end of the 20 days.

(d)] For each initial decision, the [Director] Commissioner or designee shall review the record and any exceptions submitted by any party and issue the final agency decision within 45 days of receipt of that initial decision of the administrative law judge in accordance with N.J.A.C. 1:1-18.4.

1. The [Division Director] Commissioner or designee shall inform the appellant that he or she can contact the [Division Director] Commissioner or designee to arrange an alternative means to submit exceptions, if the party cannot communicate in English or has a communication handicap. If the parties wish to take exception to the initial decision, such exception shall be submitted in writing to the [Director] Commissioner or designee, except where parties who are unable to communicate in English or have a communication handicap have made

arrangements with the [Division Director] Commissioner or designee for alternative means for submitting their exception.

[(e)] (d) The final agency decision shall be effective on the date it is rendered unless another effective date is designated.

[(f)] (e) The Division shall maintain an official record of each dispositional review and each administrative hearing for at least one year after the date the final agency decision is rendered. During this one year period, the appellant or his or her legal representative may review, upon appointment, all or any part of the official and complete record of the dispositional review or administrative hearing except as restricted by N.J.A.C. 10:120A-2.9.

[(g)] (f) The Division shall deliver the final agency decision to the appellant either by hand delivery or by sending a copy of the final agency decision to the current or last known address of the appellant and, where applicable, to counsel, no later than five business days following the rendering of the final agency decision.

[(h)] (g) The Division shall take such steps as may be necessary to assure that the final agency decision is carried out.

SUBCHAPTER 3. DISPOSITIONAL REVIEW

10:120A-3.1 When to hold a dispositional review

(a) When preliminary efforts described in N.J.A.C. 10:120A-2.4 have been declined by the appellant or have failed to resolve an issue and an appellant requests a dispositional review, and when the request is made in accordance with N.J.A.C. 10:120A-2.5, the Division shall provide a dispositional review with:

1. [The parent of a child under the supervision of the Division to dispute a denial, reduction, suspension, or termination of a Division service issue,

unless it is an across the board action resulting from a reduction in Federal or State funding;

2. A child under the supervision of the Division, or a person with physical custody acting on behalf of that child, or a sibling of that child, or a relative as defined who disputes a denial, reduction, suspension, or termination of a Division service issue, unless the denial, reduction, suspension, or termination is an across the board action resulting from a reduction in Federal or State funding;

3.] A service provider who disagrees with a status issue;

[4.] 2. A [foster] resource parent who disagrees with the removal of a foster child from his or her [foster] resource home, when the child has been residing with the [foster] resource parent for at least six months, when the child is not being returned to a birth parent or relative, when the child is not being united or reunited with siblings for whom the [foster] resource parent cannot or will not provide a home, when the child is not being moved from a temporary placement to a permanent adoptive placement and when the child has not been removed from a [foster] resource home pending the completion of an IAIU child abuse and neglect investigation or when the resource parent or household member has a finding of substantiated abuse or neglect in accordance with N.J.A.C. 10:129-5.3(a);

[5.] 3. [An adoptive] A resource parent who disagrees with the removal of a child who has been in the home continuously for six months or more for the purpose of finalizing an adoption;

[6.] 4. A [foster or adoptive] resource parent of one child in a sibling group who disagrees with the placement of a sibling [in] with a separate [foster or adoptive home] resource family for either foster care or adoption consistent with N.J.S.A. 9:6B-4d; and

[7.] 5. A [foster] resource parent who disagrees with the re-placement of a [foster] child needing foster care in another [foster] resource home consistent with N.J.S.A. 30:4C-53.3c(5)[; and

8. An appellant who is identified as a perpetrator of child abuse or neglect to dispute a substantiated finding].

(b) A relative does not have a right to appeal as a status issue a Division action that it is not in a child's best interest to be placed with a relative. A relative can appeal a Division action that the relative is either unwilling or unable to care for a child.

10:120A-3.2 Procedures related to dispositional reviews

(a)-(b) (No change.)

(c) The Review Officer [shall] may conduct a dispositional review through a telephone conference in lieu of having the parties present, when the Review Officer determines that an in-person meeting is not necessary or the appellant declines to meet in person with the Review Officer, but agrees to communicate by telephone.

(d) [The Division] If there is no in-person or telephone meeting, the Review Officer shall conduct a record and document review in lieu of having the parties present [when the appellant declines to meet in person with the Review Officer and declines to communicate by telephone.

(e) Participation in a dispositional review shall be in accordance with N.J.A.C. 10:6-1.5(e)].

[(f)] (e) The Division shall determine whether and in what manner the child's position on the matters at issue shall be ascertained and the nature of the

child's participation in the dispositional review where the outcome of the dispositional review shall have a direct impact on the child or children.

[(g)] (f) The Division shall send the appellant written notification of whether a dispositional review shall be a meeting/gathering of the parties, or a telephone conference, or a record and document review, at least five business days prior to the dispositional review, and include the time and location of the dispositional review and issues to be considered.

[(h)] (g) The Division shall grant a request for postponement of a dispositional review only for good cause, which shall include the appellant's need for additional time to provide necessary information. The Division shall consider that an appellant has withdrawn his or her request for a dispositional review when the Division has not granted a postponement and the appellant:

1.-2. (No change.)

[(i)] (h) Prior to the dispositional review, the Review Officer conducting the dispositional review, at his or her discretion, may consult with Division staff who have information related to the issue being appealed.

[(j)] (i) The dispositional review shall include a summary of the factual basis for the Division action, in accordance with N.J.A.C. 1:1-8.2(a)5, the relevant rules and policy, a review of information gathered through prior consultation with staff, information presented orally or in writing by the appellant, information presented orally or in writing by witnesses, supporters or representatives for both the Division and the appellant, and questions asked and answered in the course of the dispositional review.

[(k)] (j) The Review Officer conducting the dispositional review shall make an agency decision based on the record and the information presented at the

dispositional review or during any consultation with other Division representatives.

[(1)] (k) The Division shall forward written notification of the agency decision of the dispositional review to the appellant within 60 business days of the completion of the dispositional review process and shall include notice of whether the appellant has a right or opportunity to appeal further in accordance with 2.8 above and, if so, notice of the procedures for initiating further appeals[, including] and the [name,] contact information, including the address and telephone number [of the person to whom a request for further appeal is made].

[(m)] (l) The Division may deem waived any appeal opportunity that has not been exercised in accordance with the time frames specified in N.J.A.C. 10:120A-2.5(a)[,] and (b), [and (d),] except that the Division shall not deny an appeal where the request for an appeal was delayed for reasons beyond the appellant's control.

[(n)] If the appellant does not request further dispute resolution within 20 business days of notification of the agency decision, or is not eligible for further dispute resolution when material facts are in dispute, the agency decision shall be considered the final agency decision.

(o) If the appellant is not eligible for further dispute resolution because no material facts are in dispute, the Division shall assess the case for a Motion for Summary Disposition in accordance with N.J.A.C. 10:120A-4.2.]

SUBCHAPTER 4. ADMINISTRATIVE HEARINGS

10:120A-4.1 General provisions

(a) (No change.)

(b) The written request for an administrative hearing shall be specific as to the exact nature of the Division action [or agency decision] in dispute. The Division representative shall help the appellant express his or her request, as necessary.

(c) [The Division shall process a request for an administrative hearing through the Administrative Hearings Unit.

(d)] Upon receipt of a request for an administrative hearing, the Administrative Hearings Unit [shall] may request information from the appellant in order to make a determination as to whether material facts are in dispute. [The] When such information is received, the Administrative Hearings Unit shall make a record thereof and determine whether the appellant is entitled to an administrative hearing in accordance with N.J.A.C. 10:120A-4.3.

[(e)] (d) If the appellant is eligible for an administrative hearing, the AHU shall transmit the case to the OAL for an administrative hearing in accordance with N.J.A.C. 1:1-4.1 and 8.1.

[(f)] (e) If the appellant is not eligible for an administrative hearing for reasons other than the absence of material disputed facts, the AHU shall notify the appellant of this determination within 10 business days of making the determination, as well as provide the appellant with information concerning other appeal avenues which may be available.

10:120A-4.2 Motion for Summary Disposition

(a) When the Administrative Hearings Unit determines that an appellant is ineligible for an administrative hearing because of the absence of material disputed facts, the Administrative Hearings Unit recommends to the [Assistant]

Director of [the Division's Office of Intergovernmental] Legal Affairs or designee that the matter is appropriate for a Motion for Summary Disposition.

(b) The [Assistant] Director [for Intergovernmental] of Legal Affairs or designee, in consultation with a representative of the Attorney General's Office, shall determine whether to proceed with a Motion for Summary Disposition, based on whether or not there are material facts in dispute.

1. When the [Assistant] Director [for Intergovernmental] of Legal Affairs or designee and the representative of the Attorney General's Office determine to proceed with a Motion for Summary Disposition because no material facts are in dispute, the case shall be transmitted to the Attorney General's Office for assignment for preparation of the Motion for Summary Disposition.

2. When the [Assistant] Director [for Intergovernmental] of Legal Affairs or designee and the representative of the Attorney General's Office determine not to proceed with a Motion for Summary Disposition, because material facts are in dispute, the matter shall be transmitted to the OAL in accordance with N.J.A.C. 10:120A-4.3.

(c) The assigned representative of the Attorney General's Office transmits the completed Motion for Summary Disposition to the [Division Director] Commissioner or designee, and, in accordance with N.J.A.C. 1:1-12.2, to the appellant.

1. The appellant shall have 10 days to file exceptions with the [Division Director] Commissioner or designee.

(d) If, after reviewing all materials and any exceptions filed by the appellant and responses by the Attorney General's Office pursuant to N.J.A.C. 1:1-18.4(d), the [Division Director] Commissioner or designee determines that no material facts are in dispute, the [Division Director] Commissioner or designee

shall sign an order denying the appellant's request for an administrative hearing. The [Division Director] Commissioner or designee shall then determine whether the Division action [or decision] resulting from the undisputed facts is proper based on applicable law, regulations and policies. The [Division Director] Commissioner or designee shall affirm, reverse, or deny the Division action [or agency decision] and issue a final agency decision accordingly.

1. (No change.)

(e) If, after reviewing all materials and any exceptions filed by the appellant and responses by the Attorney General's Office pursuant to N.J.A.C. 1:1-18.4(d), the [Division Director] Commissioner or designee determines that material facts are in dispute, the [Division Director] Commissioner or designee shall sign an order denying the Motion for Summary Disposition and granting the request for an administrative hearing.

1. (No change.)

10:120A-4.3 Transmittal to OAL

(a) The Administrative Hearings Unit shall transmit a matter that constitutes a contested case, pursuant to N.J.A.C. 1:1-1.1 [or as defined by law in accordance with N.J.A.C. 10:6-1.3(a)], to the Office of Administrative Law, including:

1. A request by a parent of a child under the supervision of the Division, a child under the supervision of the Division, or a person with physical custody acting on behalf of that child, or a sibling of that child, or a relative as defined to dispute a denial, reduction, suspension or termination regarding a Division service issue, unless the denial, reduction, suspension, or termination is

an across the board action resulting from a reduction in Federal or State funding;
or

2. (No change.)

(b) The [Director] Commissioner or designee, at his or her discretion and with the concurrence of the Director of the Office of Administrative Law, may transmit an uncontested case for an administrative hearing before an administrative law judge in accordance with N.J.A.C. [10:6-1.3(b) and] 1:1-2.1.

(c) The Administrative Hearings Unit shall not transmit the following requests to the Office of Administrative Law:

1. Requests to appeal the terms of a court order which specifically addresses the disputed Division action [or agency decision];

2. Requests to dispute the Division's use of a specific service provider in the provision of out-of-home placement when the Division has offered an appropriate alternative to meet the case goal or a change in the out-of-home placement of a child without constituting a reduction of services.

3. Requests to dispute a finding of substantiated child abuse or neglect or other Division action [or agency decision] being processed in accordance with N.J.A.C. 10:120A-4.2;

4. [Requests to dispute the Division action that a child's relative is unwilling or unable to assume the care of the child pursuant to N.J.S.A. 30:4C-12.1(b); or

5. Requests to dispute a Division action related to participation in the DYFS Legal Guardianship Subsidy Program or the DYFS Relative Care Permanency Support Program] Requests to dispute any matter referenced in N.J.A.C. 10:120A-3.1.